IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

Cr.Appeal No.518 of 2003 with
Cr.Appeal No.336 of 2004

Reserved on : 10th April, 2007
Date of Decision: 27th June, 2007

Cr.Appeal No.518 of 2003	
Pappu Ram	Appellant
Versus	
State of H.P.	Respondent
Cr.Appeal No.336 of 2004	
Lekh Raj & another	Appellants
Versus	
State of H.P.	Respondent

Coram

The Hon'ble Mr. Justice Surjit Singh,J.

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? Yes.

Cri.Appeal No.518 of 2003	
For the appellant:	Mr.Jagdish Vats and N.D.Sharma, Advocates.
For the respondent:	Mr.D.S.Nainta, Dy. Advocate General.
Cri.Appeal No.336 of 2004	
For the appellants:	Mr.V.D.Khidta, Advocate.
For the respondent:	Mr.D.S.Nainta, Dy. Advocate General.

Sanjay Karol, J.

By this common judgment, both the appeals are being heard and decided together as the same arise out of a judgment of conviction and sentence passed by learned Sessions Judge, Chamba.

Both the appeals are directed against the judgment dated 29th September, 2003/16th October, 2003

[1] Whether the reporters of Local Papers are allowed to see the Judgment?

passed by Sessions Judge, Chamba Division, Chamba, H.P., whereby the appellants have been convicted of an offence under Section 302 read with Section 34 IPC, and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- each, and in default of payment thereof further simple imprisonment of six months. For the offence under Section 201 read with Section 34, IPC the appellants were convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.2000/- each and in default thereof further simple imprisonment for a period of 3 months.

The case of the prosecution as borne out from the record is as under:-

Bihari Lal, originally belonging to Village Patti, Tehsil and Police Station Palampur, District Kangra, a shepherd came to Jalsu Jot, Police Station Bharmaur, District Chamba with his live stock for the purpose of grazing and had his 'Dera' (temporary place of shelter in a jungle) at a place commonly known as Uparli Ridli Dhar in Jalsu Jot. He was staying there for the last approximately one month. Adjoining to his Dera was the Dera of Ramesh Chand son of Bodal, who also originally hailed from Palampur, District Kangra. Below his Dera, though at a short distance, was the Dera of Pappu son of Makhauli and adjoining to the Dera of Pappu there was another Dera of Lekh Raj, who also hailed from Police Station Baijnath, District Kangra.

In the evening of 27th August, 2001 at about 7 p.m. at Ridli Dhar, accused Lekh Raj alongwith Pappu committed murder of Partap Chand, resident of Village

Nayagran, Sub Tehsil Holi, District Chamba in the courtyard of Dera of Bihari Lal (PW-1) in his presence and also in the presence of Ramesh Chand (PW-2). Thereafter the accused persons allegedly carried the body of Partap Chand by tying the same with Danda (long wooden pole) and rope, to the Dera of Karam Chand (PW-3) and Raj Kumar (PW-4), which is at a distance of 1 ½ Furlong. There they asked the said persons to help them in disposing off the body and on their refusing to do so both the accused persons lifted the dead body and carried the same. While going, the accused persons threatened all the aforesaid witnesses that in case they disclosed about the incident to anybody they alongwith their families would also be killed.

A report was entered into daily diary (Ex.PH) on 29.8.2001 at 7.45 p.m. with Police Post Holi, Police Station Bharmaur, wherein it was stated that Jigri Ram (PW-8), who is the husband of President of Gram Panchayat Nayagran, was informed by one Dhani Ram, Foreman, serving in the electricity department that Ram Singh (PW-9) resident of 'Chaned', had informed him that Partap Chand of Village 'Nayagran' was lying dead at a place known as 'Buchkari' and the President of the Gram Panchayat, Nayagran was to be informed so that the matter could be reported to the police. Dharam Singh (PW-19) on the direction of SHO, Police Station Bharmaur, on 30.8.2001 proceeded for spot investigation alongwith Constable Hari Singh and Constable Yoginder Singh (PW-12). After having reached at a place known as 'Yada' on 30.8.2001. HC Raj Kumar, C.Amar Singh and Prithi Singh (PW-14) met the

police party there and from there all proceeded and reached the place known as 'Buchkari Tappa' where the dead body of deceased Partap Chand was found lying, at about 11 a.m. on 31.8.2001. The police party was also accompanied by civilians Jigri Ram (PW-8) and Jat Ram (PW-5). At the spot statement of Bihari Lal (PW-1) was recorded by ASI Dharam Singh (PW-19) under Section 154, Cr.P.C. (Ext.PA). He sent the statement (Rukka) through C.Yoginder Singh (PW-12) for registration of case to Police Station Bharmaur and carried out the investigation at the spot by taking photographs (Ext.P-6 to P-10), (negatives Ex.P-11 to P-15) of the body of the deceased Partap Chand and filled in Inquest report [Form 25.35(1)(B)] (Ext.PQ) and death report [Form 25.35(1)] (Ext.PB). The dead body of the deceased was identified by Tani Ram and Jat Ram (PW-5). A site plan where the dead body was lying was prepared being Ext.PS and site plan of the place of occurrence was prepared as Ext.PT. The dead body was sent to Primary Health Centre, 'Garola' alongwith copy of inquest report (Ext.PQ) and an application (Ext.PP) for getting the post mortem conducted. Post mortem report (Ext.PR) was prepared after the same was got conducted.

During the course of investigation, Investigating Officer took into possession the samples of blood stained soil (Ext.P3 and Ext.P4) vide recovery memo (Ext.PD). He also seized one Danda (Ext.P1) having a length of 6 ft. 10 inches and one rope (Ex.P2), which were lying at a distance of about 15 mts. from the dead body vide recovery memo dated 31.8.2001 (Ex.PC). On the basis of statement sent through C. Yoginder Singh (PW-12) to

Police Station, Bharmaur, FIR (Ext.PN) was recorded on 31.8.2001.

The accused Pappu was arrested on 4.9.2001 and his brother was informed vide memo Ext.PB. Accused Lekh Raj was arrested on 6.9.2001 and his brother-in-law was informed of his arrest vide memo Ext.PW.

During interrogation accused Lekh Raj made a disclosure statement dated 9.9.2001 (Ext.PE) in presence of Jigri Ram (PW-8) and Madho Ram (PW-7), on the basis of which the investigation party again proceeded to the spot alongwith accused Lekh Raj and from the site of occurrence got recovered stone (Ext.P5) with which the accused beaten and killed the deceased vide recovery memo dated 9.9.2001 (Ext.PF). All the recovered articles were deposited with MHC Baldev Singh (PW-13). Sealed parcels of blood as well as blood stained earth (Ext.P3, Ext.P4) stone (Ext.P5) and clothes (Ext.P16 to P-20) were sent for chemical analysis and the report with regard to the same is Ext.PO. Jamabandi (Ext.PM) (revenue record) was also got prepared from the Patwari i.e. revenue official. File was handed over to Roshan Lal (PW-17) for further investigation who filed the Challan after concluding the same.

The appellants were challaned and after complying with the provisions of Section 207, Cr.P.C. were charged with the offence punishable under Sections 302, 201 read with Section 34, IPC. The accused did not plead guilty and, therefore, were put on trial.

In all, statements of 19 prosecution witnesses were recorded by the trial Court. The statements of accused under Section 313, Cr.P.C. were also recorded. No

defence evidence was led by the appellants. After considering the entire material on record, the Court below held the appellants guilty of offence under Sections 302, 201 read with Section 34, IPC and convicted and sentenced them accordingly.

Learned counsel has assailed the order on the ground that there is an inordinate delay in recording of the statement of the witnesses; FIR was registered after due deliberations and consultation, recovery of weapon of offence, i.e. stone was effected on 31.8.2001; the case of the prosecution and the version of the witnesses is improbable and their conduct is unnatural and the witnesses have contradicted themselves.

We proceed to deal as under:-

From the statements of prosecution witnesses, it is clear that Bihari Lal (PW-1) and Ramesh Chand (PW-2) are two eye witnesses, who have seen the accused murdering the deceased Partap Chand and also carrying away his dead body. Karam Chand (PW-3) and Raj Kumar (PW-4) are the eye witnesses, who identified the accused to have brought the dead body of Partap Chand to their Dera and after threatening them have further carried the same therefrom. All the aforesaid witnesses were threatened by the accused that if they were to disclose the incident to anyone else, they would also meet the same fate. Other than these four witnesses (who have seen the murder and body of the

deceased) and Jat Ram (PW-5), Rajinder Kumar (PW-7) and Madho Ram (PW-7) there is no other witness who can testify about the complicity of the accused to the alleged offence. There is no circumstantial evidence with which the accused can be linked to the commission of offence.

Ram Singh (PW-9) saw the dead body on the basis of which Jigri Ram (PW-8) was informed, who reported the matter to the police. Jat Ram (PW-5) is brother-in-law of deceased. Rajinder Kumar (PW-6) is servant of deceased and Madho Ram (PW-7) is the person in whose presence the statement was recorded and stone, the weapon of offence was recovered. These are the main witnesses on whose testimony the decision of the case hinges.

The area where the alleged offence took place, namely, Ridli Dhar/ Buchkari is at a height of approximately 14000 to 15000 ft. and at that height the Sun sets at about 5.30 – 6.00 p.m. in the evening and it becomes dark by 7 p.m. It has come on record that there is deep mist at that height and some times one cannot recognize a person even from 3 to 4 ft. (PW-1). The nearest Village from Ridli Dhar is Village Nayagran, which is at a distance of approximately 50 kms. and from Nayagran the nearest Police Station is Bharmaur, which is at a distance of approximately 100 Kms. from Ridli Dhar. The distance between Nayagran and Bharmaur is also quite long. At

the height where the incident is stated to have taken place, habitation is sparse and jungle and meadows are inhabited by shepherds (Gujjars) who flock the area with live stock for grazing purposes. They have their Deras where they temporarily reside for the purpose of grazing their cattle during summer for such period as the climate would permit them.

We would firstly examine the statements of the witnesses on the point of motive and recovery of weapon of offence.

MOTIVE

Bihari Lal (PW-1) has stated in his examination-in-chief that when the accused were giving beatings to the deceased Partap Chand, they were saying "We have made a man of you" (*आज हमने तुम्हे बन्दा बना दिया है*). In his cross-examination he has stated that the dispute between the deceased and the accused persons was with respect to the boundary of grazing ground. He, however, clarified to say that dispute regarding boundary never took place in his presence and since the deceased and the accused were mentioning Banna-Banna (*बन्ना -बन्ना*) so he presumed that there is dispute of boundary (*बन्ना*).

Ramesh Chand (PW-2) in his examination-in-chief has stated that their "might" be dispute of Banna(*बन्ना*) between the deceased and the accused persons. In his cross-examination he, however,

clarified that he did not know the cause of quarrel between the deceased and the accused.

Raj Kumar (PW-4) in his examination-in-chief has stated that he did not know the bone of contention between the accused and the deceased and Karam Chand (PW-3) has not mentioned anything with regard to the same.

Jat Ram (PW-5), brother-in-law of deceased, in his examination-in-chief states that there was a boundary dispute of grazing ground between the deceased and the accused persons, which is the reason for committing the murder of Partap Chand by the accused. He however, admits that he and his brother were living separately since long and Partap Chand even though belonging to Village Nayagran was living in Badriana, since the time of his fore-fathers. He does not mention the nature of dispute or the property in relation to which there was a dispute. In his cross-examination he, however, admits that no dispute ever took place in his presence between the deceased and the accused regarding Banna (*बन्ना*).

Rajinder Kumar (PW-6) servant of deceased Partap Chand states that prior to the incident deceased had told him that there is a Banna (*बन्ना*) dispute between him and both the accused and, therefore, he should be alert from them. In his cross-examination he, however, admits that deceased had disclosed the same about 4-5 months prior to the occurrence and there

was none present at the time when he told the same nor did he disclose this fact to anybody prior to the occurrence and also to the police when his statement during investigation was being recorded. Careful examination of his statement, in our view, does not inspire confidence. He states that he saw the dead body of Partap Chand at a place 'Bich Kale Da Tabba' with injuries on his face, chest and abdomen and blood smeared on the face and that he sent two boys to inform the relatives of the deceased whose names, however, he did not remember. Further from his statement, it is clear that he was working as a care-taker of the live stock of deceased Partap Chand at his Dera at Mochdu Dhar, which is also at a far off place. He mentions that deceased Partap Chand on 27.8.2001 left the Dera at Mochdu Dhar for the shop of Pritam Chand. As there is less habitation at that height and persons residing and their description is normally known to every one. Strangely he does not remember the names of the boys through whom he sent the message but also does not make any further inquiry or investigation after seeing the body or inform any other person living in the Deras including Pritam Chand to whose shop the deceased had gone. He does not disclose this fact of dispute to the police or to any body else. He does not give the description of the property or the boundary regarding which there was a dispute. His conduct, therefore, is

quite unnatural and his statement with regard to dispute of boundary also does not inspire confidence. Therefore, we are of the view that the version of the prosecution that there was a dispute between the parties with regard to boundary, the motive behind the murder, does not inspire confidence and is not correct.

Recovery of Weapon

Now, let us examine the statements of witnesses on the point of recovery of weapon, with which the offence is stated to have been committed. Vide recovery memo (Ext.PF) dated 9.9.2001, stone having length of 6 inches with width of 3 inches from one side and 2 inches from other side bearing slight blood stains on it, was recovered from the courtyard of the Dera of Bihari Lal (PW-1) and Ramesh Chand (PW-2) in presence of Jigri Ram (PW-8) and Madho Ram (PW-7). The recovery is as a consequence of the statement of accused Lekh Raj made under Section 27, Cr.P.C. (Ex.PE) on 9.9.2001.

Madho Ram (PW-7) in his examination-in-chief, states that the accused on interrogation had stated that they had caused the death of Partap Chand with stones and thereafter the accused persons led the police party to get the stones recovered. He has identified his thumb impression on the recovery memo (Ex.PF), statement (Ext.PE) and sketch of stone (Ext.PG). His cross-examination contradicts him when

he states that the police had met him at 'Batbi' in the morning and 'Batbi' is at a distance of 22 miles from Ridli Dhar. Then obviously 'Batbi' is also far off from Bharmaur where the disclosure statement was recorded. If this was so then how could he be a witness to the disclosure statement (Ex.PE).

Quite differently Jigri Ram (PW-8), in examination-in-chief has stated that statement of Madho Ram (PW-7) with regard to recovery of stone was recorded on 31.8.2001. He also states that he did not accompany the police to Ridli Dhar when he was associated by the police for the second time and that the police had obtained his signatures on all the documents including Ex.PE and Ex.PF on 31.8.2001. It has come on record that Ridli Dhar is at a distance of 100 Kms. from Police Station Bharmaur. According to this witness, documents (Ex.PE and Ex.PF) were got signed on 31.8.2001. Thus there is inherent contradiction in the statements of the witnesses, the date of the recovery memos and the date of disclosure statement (Ex.PE). When the witness states that his statement was got signed on 31.8.2001 then obviously the statement dated 9.9.2001 and the recovery memo dated 9.9.2001 are false. Bihari Lal (PW-1) in his cross-examination states that at the time of recording of his statement (Ex.PA) under Section 154, Cr.P.C., he had shown the stones to the police with which the accused had given the beatings to the

deceased and another eye witness Ramesh Chand (PW-2) does not mention anything about the same. Further more from the statement of Dharam Singh (PW-19), it is clear that Ex.PE was got recorded by him during the course of investigation in Police Station, Bharmaur, at about seven in the morning. He has admitted that Madho Ram (PW-7) is resident of Kangra, but has stated that he did not know Kangra was at a distance of 200 Kms. from Bharmaur. He admits that people are residing after 1 km. from Police Station Bharmaur. He admits that Nayagran where Jigri Ram (PW-8) resides is at a distance of 50 Kms. from Bharmaur. Why local people who were residing in the vicinity of the Police Station were not involved is intriguing? Both Madho Ram (PW-7) and Jigri Ram (PW-8) are from far off place. The time of recovery as stated by the witnesses is approximately 4.30 p.m. in the evening. Therefore, in this background the case of the prosecution that the disclosure statement was prepared in the morning of 9.9.2001 and the recovery was effected at about 4 a.m. in the evening on the same day casts doubt on the version of the prosecution. According to him he left the Police Station, Bharmaur, for effecting recovery at about 5.00 a.m. He contradicts that part of his statement where he states that the disclosure statement was made at 7.00 in the morning but also contradicts the statement of Madho Ram (PW-7) who states that he met

the police at “Batbi”. After a detailed interrogation carried out throughout night, how the police party alongwith the accused and the witnesses could have walked for a distance of 100 Kms. at that height and rainy season in a hilly terrain is a mystery. One of the witnesses is a resident of District Kangra, a far off place about 200 kms. away. Another witness is resident of Nayagran, which is 50 Kms. walking distance from Police Station Bharmaur. The witnesses have already stated that the documents were got signed on 31.8.2001 itself. Yoginder Singh (PW-12) does not deny that the distance between the Police Station, Bharmaur and Ridli Dhar is 100 Kms but admits that the entire journey is on foot and is covered by walking for about 12 to 13 hours.

Importantly Jat Ram (PW-5) also states that police had taken into possession stones, which were 2-3 in number and no document with regard to the same was reduced into writing. Jigri Ram (PW-8) has stated that Madho Ram (PW-7) was with him and the police party. This he is referring to the visit of 31.8.2001 and according to Madho Ram (PW-7) he has visited the site only once. Thus with these material contradictions in the testimony of the witnesses Jigri Ram (PW-8), Madho Ram (PW-7) and ASI Dharam Singh (PW-19) it is clear that the case of the prosecution with regard to recovery of stone is false, concocted and highly improbable.

Defence of accused/witness beaten up by villagers

Before we proceed to deal with the case of the prosecution, in view of what we have discussed above it is imperative to notice the defence of the accused. From the statements of witnesses, the defence taken is that the accused had left the place of occurrence 2-3 days prior to the date of the incident. Deceased Partap Chand, a resident of Nayagran had been killed by the residents of Nayagran and on the asking of said residents, the witnesses have falsely implicated the accused with the incident with which they have nothing to do. It has come on record that approximately 30 to 35 villagers had visited the spot and given beatings to witnesses Bihari Lal (PW-1) and Ramesh Chand (PW-2). Presence of Pradhan alongwith said villagers before the arrival of the police party on 31.8.2001 has also come on record.

According to Bihari Lal (PW-1) ,Pradhan accompanied by 3-4 persons had already visited the spot before the arrival of the police and was searching for the dead body of the deceased for 3-4 days. He, however, has denied the suggestion that had the police not arrived at the place of occurrence the residents of Village Nayagran would have taken his life. Ramesh Chand (PW-2) in his cross-examination has also admitted that one day prior to the incident people from Nayagran had reached the

spot and they were also there before the arrival of the police. Karam Chand (PW-3) also admits having met 30-35 residents of Village Nayagran who had come to Ridli Dhar. Not only that he further states that he also met Pradhan to whom he had narrated the entire incident as to how and at what time the accused had approached them. He further admits that 30-35 persons had given beatings to witnesses Bihari Lal (PW-1) and Ramesh Chand (PW-2). Therefore, the statements of witnesses cast doubt on the recording of daily diary (Ex.PH), which discloses that Jigri Ram (PW-8) was informed about the death of Partap Chand by one Dhani Ram, Foreman at Bharmaur on 29.8.2001 at about 5.15 p.m. when he was returning from Chamba where he had gone alongwith his wife Sarestra Devi, Pradhan of the village. Jat Ram (PW-5) has stated that Partap Chand had migrated from Village Nayagran. It has also come on record that family of the deceased resides in District Kangra and not Chamba, that means even though the deceased is originally resident of Nayagran, however, his family resides at a distance of approximately 200 Kms. and he used to bring his live stock for grazing to Ridli Dhar in Chamba district.

From the aforesaid statements, thus, it is clear that presence of residents of Village Nayagran at the place of incident and their giving beatings to the witnesses, presence of Pradhan and their

searching for the dead body of the deceased at least 2-3 days prior to the date of arrival of the police party at the spot is thus established.

Jagiri Lal (PW-8) husband of Smt.Sarestra Devi, President of Gram Panchayat, Nayagran has been referred to as Pradhan by the witnesses. A suggestion though denied has been put to the witnesses in this regard also. The version of Bihari Lal (PW-1) and Ramesh Chand (PW-2), therefore, is not the first and correct version as has been stated in the Court. That they were given beatings by the villagers in fact raises a finger of suspicion towards them. It is also for this reason that doubt is cast with regard to the case of the prosecution and the version of the witnesses.

Recording of Rukka and FIR

It is important to now examine the background of the recording of FIR (Ext.PN) dated 31.8.2001 ASI Dharam Singh (PW-19) on examination states that on reaching the place known as Buchkari Tappa at about 11 a.m., Bihari Lal (PW-1) made his statement under Section 154 Cr.P.C. and he sent the same (Rukka) to Police Station through C.Yoginder Singh (PW-12) for registration of an FIR. This is falsified by the version of Bihari Lal (PW-1) who states that he did not visit the place where the dead body was lying. It has come on record that the distance between the Dera i.e. place of incident and

the spot where the dead body was lying is 1 ½ Furlang, which in a hilly terrain takes time to travel on foot. The incident has occurred in a hilly terrain at a height of 14000 to 15000 fts. If the witness had not visited the place where the dead body was lying then how did the police record his statement immediately on reaching the spot. ASI Dharam Singh (PW-19) has stated that he reached the spot where dead body was lying at 11 a.m. Obviously the police would have taken time to investigate and find out that there is an eye witness by the name of Bihari Lal (PW-1), who had to be located and his statement recorded. It is not the case of the prosecution that police was in the know of the fact that Bihari Lal (PW-1) is an eye witness to the incident. Bihari Lal (PW-1) according to police has volunteered to make the statement. There is another aspect of recording of statement. Jigri Ram (PW-8) has stated that Bihari Lal (PW-1) and Ramesh Chand (PW-2) on enquiry from the police disclosed that Danda and rope were lying at a distance of 10-12 mts. from the dead body. There is, thus, inherent contradictions in the statements of Bihari Lal (PW-1), Jigri Ram (PW-8) and ASI Dharam Singh (PW-19). That apart Rukka is stated to have been sent through Constable Yoginder Singh (PW-12) for registration of the case to Police Station, Bharmaur. Yoginder Singh (PW-12) states that he was given the

Rukka at about 11 am. at Ridli Dhar and he walked from there to cover the entire journey on foot for about 12-13 hours and on the basis of which FIR (Ex.PN) was registered on 31.8.2001 and he took the file and returned it to Dharam Singh (PW-19) on 1.9.2001, the time recorded on the FIR is 10 p.m. In a hilly terrain and that too when the monsoon is at its peak, as to whether a person can walk 100 kms. in 13 hours itself raises a doubt. That apart, there is contradiction, minor though, in his statement. If he left the site at 11 a.m. to travel for 13 hours then how could FIR be registered at 10 p.m. on 31.8.2001. How the said witness again walked back 100 kms. next day is a mystery. Definitely if the Pradhan and the villagers of Nayagran were in the area prior to the police party reaching the place of occurrence, then obviously there has been due deliberation and consultation in recording of the FIR. In this background, the recording of daily diary report as also the FIR cast suspicion and doubt and does not seem to be true as is projected by the prosecution.

Statement of witnesses regarding Complicity of offence under Sections 302 and 201, IPC.

It is the case of the prosecution that Partap Chand was murdered by accused persons in the evening of 29.8.2001 in the courtyard of Dera of Bihari Lal (PW-1) and Ramesh Chand (PW-2) in their

presence by giving blows of fist and stones and beatings and that Bihari Lal (PW-1), Ramesh Chand (PW-2), Karam Chand (PW-3) and Raj Kumar (PW-4) are all witnesses, who have seen the destruction of evidence.

We would now examine in detail the statements made by the eye witnesses, who have seen the accused not only murdering the deceased Partap Chand but also causing disappearance of the evidence in relation thereto.

Bihari Lal (PW-1) has stated that at about 7 p.m. on 27.8.2001 he alongwith Ramesh Chand (PW-2) was bringing his buffaloes for milking to their Dera and when they reached nearby they saw that accused were giving beatings to Partap Chand nearby the courtyard of Dera. They were scuffling and giving beatings with fist and stones. Partap Chand was lying on the ground and accused were giving beatings with fist and stones on the chest, face, abdomen and they were saying, "*आज हमने तुम्हे बन्दा बना दिया है*". Blood also started oozing. When the witnesses tried to save Partap Chand from the clutches of the accused they were threatened of their lives. As a result of the said beatings Partap Chand died on the spot. Thereafter both the accused brought Danda and rope and after tying them took away the dead body from the spot and threw away downwards. The accused threatened both the witnesses Bihari Lal (PW-1) and

Ramesh Chand (PW-2) that in case they disclosed the incident to anybody, they would also take their lives because of which they did not disclose the incident to anybody.

Version of Ramesh Chand (PW-2) is also similar except that he did not mention that the body was thrown downwards. If fact he contradicts PW-1 by stating that the dead body of Partap Chand was taken away by the accused on their shoulders to unknown place.

Karam Chand (PW-3) has stated that in the night of 27.8.2001 at about 11.30 a.m. both accused persons visited him and informed that dead body of Partap Chand was lying and threatened that if he did not lift and take away the dead body of Partap Chand downwards from that place they would take his life. He refused to do so and told that the accused were at liberty to do whatever they like. Thereafter, both the accused persons of their own lifted the dead body with the help of Danda and took the same downwards. While leaving the spot, both the accused persons threatened him not to disclose the said fact to anybody.

Raj Kumar (PW-4) in his statement has stated that on 27.8.2001 at about 1.30 a.m. in the night while he was sleeping with Karam Chand (PW-3) in his Dera the accused persons called for them loudly and asked them to come out of the Dera. On the door being

knocked they came out and made enquiries as to why they were being called out. On coming out, the witnesses saw the dead body of deceased Partap Chand tied with Danda and rope. They were commanded by the accused persons to lift the dead body so that they could throw the same somewhere else. They, however, did not obey the same. Thereafter, both the accused lifted the dead body on their shoulders and took the same away from the courtyard to some other place and while leaving they threatened them not to disclose the said fact to anybody otherwise they would also be killed.

Subsequently, the said dead body as per the version on record has been seen by two persons namely, Rajinder Kumar (PW-6) and Ram Singh (PW-9) independently and separately. As per version of Rajinder Kumar (PW-6) on 27.8.2001 deceased Partap Chand left his Dera at Mochdu Dhar towards the shop of Pritam Chand. He was to return back the same day and Partap Chand did not come back since he went out to search for him and on 3rd day he saw the dead body of Partap Chand lying at a place 'Bich Kale Da Tabba', with injuries on his face, chest and abdomen and blood smeared all over the body. He informed the relatives of Partap Chand by sending information through two boys.

The second person who saw the body independently is Ram Singh (PW-9), and as per his

version on 29.8.2001 at about 11 a.m. while he was coming back to his village at a place called 'Buchkari' he saw the dead body of Partap Chand lying there. While he was on his way to report the matter to Pradhan, he met lineman and since he was going to Nayagran he asked him to report the matter to Pradhan, Nayagran. What followed subsequently was recording of Rukka and investigation carried out by ASI Dharam Singh (PW-19) to which we have already referred exhaustively in the foregoing paras.

What needs to be examined is whether version of the witnesses is such that it does not cast any doubt about the prosecution case or raises hypothesis which points towards the innocence of the accused.

Bihari Lal (PW-1) in his cross-examination states that he got the message of death conveyed to all the persons in the vicinity. Strangely he does not disclose the fact to any person about the threats meted out to him by the accused persons. However, he does not remember the name of even a single person to whom he sent the message. According to him, the accused had left Ridli Dhar after the occurrence. He deputed his uncle Ramesh Chand to convey the message and also informed the persons living in the vicinity. Therefore, there is material contradiction in his statement with regard to disclosure of incident to any person.

Ramesh Chand (PW-2) has stated that he did not disclose the incident to anybody because of fear and threat. However, in his next breath he says that on the very next day he informed about the occurrence not only to other Derawalas and comes to police of his own and not on the asking of anybody else. His statement, however, would show that he has improved from his earlier version. He states that Pradhan and 6-7 associates reached Ridli Dhar after the occurrence, however, no conversation ever took place between him and the Pradhan. His statement shows that he has retracted from his earlier statement whereby he had stated that he had disclosed the entire version to the Pradhan, who visited his Dera. In the face of retraction of his statement, his version that he had not disclosed the incident to Pradhan, who according to him was at site with his associates is to be taken as incorrect. This only renders his conduct and account unnatural and false. A person who knows that accused had fled away from the place of occurrence and are not present in the area, rendering the threat perception negligible, would have certainly disclosed the incident to the Pradhan of the area. Not only this, he is not in a position to even state the distance between his Dera and Dera of accused Lekh Raj. He is deliberately suppressing information. Further his conduct is unnatural and his statement cannot be believed is

also evident from his statement that at the time when the accused were giving beatings to the accused he did not raise hue and cry in spite of the fact quarrel had taken place 10 to 15 minutes. This in any case is contradicted by the version of PW-1 who states that they did raise hue and cry.

There are contradictions in the statements of Bihari Lal (PW-1) and Ramesh Chand (PW-2) even with regard to presence of Pradhan before arrival of the police. According to Bihari Lal (PW-1) Pradhan of Nayagran had visited the spot before the arrival of the police alongwith 3-4 persons, who were there for 3-4 days searching for the body of the deceased and that he had disclosed the incident to the Pradhan and her associates whereas Ramesh Chand (PW-2) after having made the statement in support of the said version retracted and stated that Pradhan had not visited his Dera and he had not narrated the entire incident to the Pradhan. The fact that villagers 30-35 in number had visited Ridli Dhar is denied by Karam Chand (PW-3). If the Pradhan had already visited and was present at Ridli Dhar 3-4 days prior to the visit of the police party for the first time then obviously the version of Jigri Ram (PW-8) is doubtful not only with regard to his accompanying the police party on 30.8.2001 so as to reach Ridli Dhar on 31.8.2001 registering of the daily diary report.

Karam Chand (PW-3) states that Dera of Bihari Lal (PW-1) is at a distance of 1 – 1 ½ Kms. and Dera of Pappu and Lekh Ram, accused is at an equal distance from his Dera. He also admits that Pradhan had returned the same day i.e. on 29.8.2001. He admits that 35 persons gave beatings to Bihari Lal (PW-1) and Ramesh Chand (PW-2). This witness has also stated that even at a distance of 3-4 ft. the persons cannot be recognized when there is mist.

Raj Kumar (PW-4) has stated that he did not know the deceased prior to the incident and that he had recently started residing in the Dera and had come there only one and half months ago. He admits that he does not know Bihari Lal (PW-1) and Ramesh Chand (PW-2). According to him when he alongwith Karam Chand (PW-3) came out of their Dera, it was pitch dark and he did not light the fire/ light, yet he is able to recognize the deceased by seeing his face from the distance of 2 to 3 ft. His version is also in contradiction with that of Karam Chand (PW-3) where he denies that any beatings had been given by the residents of Nayagran to the residents of Ridli Dhar. But, however, both the witnesses admit that beatings were given to Ramesh Chand (PW-2) and Bihari Lal (PW-1) and further admit the presence of Village Pradhan, Nayagran alongwith some persons. In view of the contradictions in the statement, it is difficult to believe the testimony of this witness. He is a new

person, visiting the area for the first time and not knowing either the deceased or accused, therefore, how is it possible for him to identify the body of the deceased as also the accused from short distance in the absence of any light. It is not his version that the identity of deceased or accused was disclosed to him by Karam Chand. In this background, the version of the prosecution that the accused persons had carried the body from the Dera of Bihari Lal (PW-1) and travelled with the body, on foot, for a distance of 1 - 1½ Kms. in pitch dark at mid night is difficult to believe, particularly, when these witnesses have stated that Dera of both the accused persons is situated at an equal distance. If the accused persons were able to carry the body of their own for a distance of 1 – 1½ Kms. then why would they require the assistance or help of other persons just to throw away the body down the slope on the hill. Keeping in view the topography, altitude, sparse population and the climatic conditions of the area, the accused could have done it at any place without assistance from any person.

Jat Ram (PW-5), brother-in-law, of deceased states that he came to know that Partap Chand's body was lying at Ridli Dhar and that he alongwith his elder brother-in-law Tani Ram reached Buchkari on 30.8.2001. He admits that on having reached Ridli Dhar on 30.8.2001 he met both Bihari Lal (PW-1) and

Ramesh Chand (PW-2) and also saw the dead body. According to him, he did not inquire from any body as to how Partap Chand died nor did any body disclose the cause of death to him. He, however, admits that residents of Village Nayagran also reached there. Bihari Lal (PW-1) has stated that he did not meet any one after 27.8.2001. Thus there is contradiction in the statements of two witnesses to this effect. Not only this, version of Bihari Lal (PW-1) is that message was also conveyed to the persons living in the vicinity also, yet Jat Ram (PW-5), a close relative, is not informed of the incident and the cause of death either by Bihari Lal (PW-1) or Ramesh Chand (PW-2). Not only this, Jat Ram (PW-5) has stated that he did not inquire from anybody how Partap Chand died. His statement, therefore, seems to be unreliable. It is quite unnatural for a relative to meet the residents/ neighbors of the area and not even inquire about the cause of death and further after reaching Buchkari on 30.8.2001 with whom did he stay, how did he know the exact place where the body was lying is any body's guess. The natural course is either to inform the police or make arrangements for the funeral. His statement is conspicuously silent about any of these facts. It has come on record that the deceased had his Dera at Mochdu Dhar and his employee had left for the Dera and was not present at the site where the body was

lying. As per Jat Ram (PW-5) on 30.8.2001 when he reached Ridli Dhar he saw that the dead body and he noticed no blood. However, he also contradicts himself to say that at the time when police took into possession blood stained earth, blood was oozing out of the nose.

Rajinder Kumar (PW-6) states that he was working as shepherd and caretaker of sheep and goat of deceased Partap Chand for the last about 4-5 years. Partap Chand used to occasionally visit his Dera at Mochdu Dhar and return to his Village Badriana, Kangra, after leaving the sheep and goat in his custody. According to him, on 27.8.2001 deceased had gone towards the shop of Pritam Chand from his Dera at Mochdu Dhar by saying that he would return by evening. Since he did not return, therefore, he searched for him next day and day thereafter i.e. the 3rd day when he saw the dead body of Partap Chand lying at a place 'Bich Kale Da Tabba' with injuries. Thereafter, he informed the relatives of deceased Partap Chand. Surprisingly, he does not remember the names of the boys through whom he sent the message to inform the relatives. Interestingly, he left the body of his employer in the jungle and made no effect to contact the local people or police. As an employee he had to take care of the funeral and in any case know that the body had to be protected from wild animals in the jungle. This only renders his conduct

extremely unnatural and makes his version extremely unreliable. The statement of Rajinder Kumar (PW-6) that he had seen the dead body at Bich Kale Da Tabba, which according to him is about 4-5 Kms. from Ridli Dhar is contradicted by the statement of Ramesh Chand (PW-2), who has stated that dead body was found at a distance of 1 ½ Furlang from the place of occurrence, which is at Ridli Dhar.

Further there is no consistency with regard to distance of Dera of the deceased at Mochdu Dhar. According to PW-1 the distance of Mochdu Dhar from Ridli Dhar is 7-8 Kms., whereas as per Ramesh Chand (PW-2) the distance is 20 Kms. This gains significance while considering the version of Rajinder Kumar (PW-6), who not only travelled on foot from Mochdu Dhar to the place where the body of the deceased was lying but also returned back to reach his Dera after arranging for two boys to inform the relatives of the deceased.

Jigri Ram (PW-8), husband of Pradhan of Gram Panchayat, Nayagran, has stated that on his return from Chamba where his wife was undergoing training on 29.8.2001 at about 5.15 p.m. Dhani Ram, Foreman, Electricity Department, met him in the village and informed him that a dead body is lying at a place known as Buchkari. He in turn informed the police and accompanied by Madho Ram (PW-7) went with the policy party to the place where the dead body

lay. According to him, Buchkari is also known as Ridli Dhar, where the police carried out the investigation. According to him Bihari Lal (PW-1) and Ramesh Chand (PW-2) informed the police that the quarrel between Lekhi and Partap Chand took place at a tea stall and Bihari Lal (PW-1) disclosed the name of accused Lekhi only. His version therefore, contradicts the version of Bihari Lal (PW-1) and Ramesh Chand (PW-2). Now, if only Lekhi was named by Bihari Lal (PW-1) then admittedly accused Pappu Ram was falsely implicated. Version of Madho Ram (PW-7) has already been noticed to be shaky and unreliable.

Dr. Jalam Singh(PW-18), Medical Officer, who conducted the post-mortem and given post mortem report (Ext.PR) has stated that probable time between the death and the post-mortem is approximately 5 days. As is evident from the post-mortem report (Ext.PR), the body has been examined on 31.8.2001 at about 6 p.m. The death is reported to have taken place on 27.8.2001 at 9.30 a.m. Perusal of the post mortem report does not show any bruises or marks of the Danda or rope with which the well built body of the deceased was tied and carried by accused for quite a distance. This further makes the version of the prosecution doubtful. After all, as per prosecution version the accused had carried the body of the deceased from the Dera of Bihari Lal (PW-1) and Ramesh Chand (PW-2) to the Dera of Karam Chand

(PW-3) and Raj Kumar (PW-4) and further from there. It has come on record that the distance is more than 1 ½ Kms. Even with regard to the recovery of Danda and rope there is doubt. Importantly the Rukka does not mention the recovery of Danda and rope.

As per the version of Jigri Ram (PW-8) the same was recovered on the asking of Bihari Lal (PW-1) and Ramesh Chand (PW-2), whereas as per Bihari Lal (PW-1) he did not visit the place where the dead body was lying and as per version of ASI Dharam Singh (PW-19) the recovery was made in the presence of Tani Ram and Jat Ram (PW-5) and not Bihari Lal (PW-1). There is serious doubt about the recovery and also the version of the prosecution that the accused carried the body after tying it up with Danda and rope, particularly, when no marks have been found on the body of the deceased in terms of the post-mortem report.

Importantly no blood has been noticed at the place of incident or recovered from there. Nor were any blood stains found on the clothes of the accused persons. According to Bihari Lal (PW-1) and Ramesh Chand (PW-2), deceased was given beatings for 10-15 minutes with stones, which were shown by Bihari Lal (PW-1) to the police at site also. Absence of the blood at the site also raises doubt with regard to the case of the prosecution.

Perusal of the statements would further show that there are major improvements in the statements of Bihari Lal (PW-1) and Ramesh Chand (PW-2) with the statements made under Section 161, Cr.P.C., which are serious and have bearing with regard to commission of offence punishable under Sections 302, 201 read with Section 34, IPC.

Improvements are:

> "I and Ramesh only had seen the accused persons carrying the dead body of deceased Partap Chand. I had stated to the police that both the accused persons brought one Danda and one rope and with the help of those articles, they tied the dead body of the deceased and took the same from the spot (confronted with statement Ex.DA/Ex.PA, wherein it is not so recorded). I had also stated to the police that the deceased and accused persons were grappling with each other (confronted with Ex.PA, wherein it is not so recorded)."
>
> "I had stated to the police that I had asked the accused persons as to why they were giving beatings to the deceased on which they told us not to come there (confronted with Ex.PA, wherein it is not so recorded)."
>
> "I had stated to the police that I had conveyed the message to all the nearby persons (confronted with Ex.PA, wherein it is not so recorded)."
>
> "I had stated to the police that I sent Ramesh Chand, my "Chachu" to convey the message to the nearby persons (confronted with Ex.PA wherein it is not so recorded)".

> "I had stated to the police that we had asked the accused not to take away the dead body but they threatened us (confronted with Ex.DA, wherein it is not so recorded)."

Thus it can be seen that the statements of the material witnesses, who are stated to have witnessed the incident, there is material contradiction and their testimony is totally unreliable, unworthy of credence and does not inspire confidence. It cannot be said that there is material evidence on record to show the complicity of the accused with the commission of the offence for which they have been charged.

There are two witnesses who have alleged to have witnessed the assault on the deceased resulting into his death. Their testimony, as we have seen earlier is shaken and is unreliable. With regard to destruction of evidence there are four witnesses, whose testimony is also unreliable and does not inspire confidence.

Thus in the present case evidence adduced by the eye witnesses suffers from material discrepancy, inconsistency and improbability making the case of prosecution as also the veracity of the eye witnesses doubtful. As has already been held Bihari Lal (PW-1) and Ramesh Chand (PW-2) who had been given beatings by villagers, had reason to falsely implicate the accused person for the charged offence. The version

does not seem to be naturally straightway and trustworthy. The same is not correct by other facts established in the trial by the prosecution. The discrepancy in the ocular version of the witnesses is vital and goes to the root of the nature of the offence.

There is no doubt in our mind that there is no cogent evidence pointing to the guilt of the accused alone, beyond all reasonable doubt. Certainly the contradictions in the evidence and the totality of the circumstances in the prosecution case raises a definite doubt in the matter of involvement of the accused.

As an upshot of the above discussion, we are of the definite view that the case of the prosecution does not stand established beyond reasonable doubt. Consequently, both the appeals are accepted, judgment of trial Court convicting and sentencing the appellants of the offences under Sections 302, 201 read with Section 34 of the Indian Penal Code is set aside and the appellants are acquitted. They being in jail, are ordered to be released immediately, in case their detention is not required in any other case.

(Sanjay Karol),
Judge

(Surjit Singh),
Judge

27th June, 2007
(C)